IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13272 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAFATLAL SOMABHAI PRAJAPATI

Versus

SUPERINTENDING ENGINEER

Appearance:

1. Special Civil Application No. 13272 of 1993

MR HM PARIKH for Petitioner No. 1-4

MR KS NANAVATI for Respondent No.1

MR MG DOSHIT for Respondent No.2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 16/06/2004

ORAL JUDGEMENT

1. Mafatlal Somabhai Prajapati and others, petitioners have filed this petition under Articles 226 and 227 of the Constitution of India, with a prayer that

this Court may please to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents i.e. Superintending Engineer, Gujarat Electricity Board - respondent No.1 and Gujarat Electricity Board - respondent No.2 to appoint the petitioners on the posts of Line Man in the first respondent's circle pursuant to the list prepared by the respondents.

2. The facts giving rise to this petition are as under:-

2.1 It is a case of the petitioners that the respondents give training to the apprentices under its various Sub-Divisions, and for that purposes, the respondents invite applications. The petitioners had submitted applications for apprentices in the respondent No.1 - Division. The petitioners have produced the order dated 9.9.83 which has been produced at Annexure "A" to the petition and they are appointed in connection with engagement as full term apprentices in the App.LM under the Apprentices Act. As far as petitioner No.4 is concerned, the order is not produced.

2.2 It is a case of the petitioners that they have completed their apprenticeship with the first respondent's circle and the petitioners were relieved after the apprenticeship/training of three years and the said apprenticeship was for Line Man training. The petitioners have also produced the said order at Annexure "B" to the petition by which the petitioners were relieved on completion of apprenticeship.

2.3 It is a case of the petitioners that after completing their apprenticeship, the first respondent prepared seniority list for the appointment of the persons in Gujarat Electricity Board on the relevant posts. The petitioners had taken apprenticeship of Line Man and hence seniority list for the appointment of the petitioners to the posts Line Man was also prepared according to completion of the apprenticeship. However, it is a case of the petitioners that the petitioners were not offered employment in the respondent-Board.

2.4 It is a case of the petitioners that the other persons who had completed apprenticeship after the petitioners were taken in service by the respondents, while the petitioners were not taken in service by the respondent-Board. In view of the same, the petitioners filed present petition challenging the action of the respondents for not appointing the petitioners after

completing apprenticeship.

3. Mr.Parikh, learned advocate for the petitioners has relied upon the provisions of the Apprentices Act, 1961.

3.1 Sec.2(a) which provides "All India Council" means the All India Council of Technical Education established by the resolution of the Government of India in the former Ministry of Education No.F.16-10/44-E.III, dated the 30th November, 1945".

3.2 Sec.2(aa) provides "apprentice" means a person who is undergoing apprenticeship training [*****] in pursuance of a contract of apprenticeship.

3.3 Sec.2(aaa) provides "apprenticeship training" means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices.

3.4 Sec.3 provides qualifications for being engaged as an apprentice.

3.5 Sec.4 provides contract of apprenticeship.

3.6 Sec.5 provides novation of contract of apprenticeship.

3.7 Sec.6 provides period of apprenticeship training.

3.8 Sec.7 provides termination of apprenticeship contract.

3.9 Sec.8 provides number of apprentices for a designed trade.

4. The aforesaid petition was filed somewhere in November 1993 and this Court by its order dated 24th November, 1993, admitted the matter and made returnable on 3.12.1993.

5. On behalf of respondeat Board, Mr.K.S.Nanavaty, learned counsel appears. He submitted that the apprenticeship does not confer any right for employment in view of the provisions of Apprenticeship Act. He has relied upon the judgment of the Hon'ble Supreme court in the case of The Employees' State Insurance Corporation

and another Vs. The Tata Engineering & Co. Locomotive Co.Ltd and another reported in AIR 1976 SC 66. After considering the provisions of Apprenticeship Act, in para 7 on page 68 the Hon'ble Apex Court has held as under:

"para.7 .... It is, therefore, inherent in the word 'apprentice' that there is no element of employment as such in a trade or industry but only on adequate well-guarded provision for training to enable the trainee after completion of his course to be suitably absorbed in earning employment as a regular worker. The fact that a trainee may have been absorbed in the company where he is undergoing the training, is not relevant for the purpose of comprehending the content of the term."

5.1 In para 13 on page 69 the Hon'ble Apex Court has observed as under

"para.13 The concept of apprenticeship is, therefore, fairly known and has now been clearly recognised in the Apprentices Act. Apart from that, as we have noticed earlier, the terms and conditions under which those apprentices are engaged do not give any scope for holding that they are employed in the work of the company or in connection with its work for wages within the meaning of Section 2(9) of the Act."

5.2 In view of the aforesaid judgment of the Hon'ble Apex Court, the learned counsel for the respondent Board has stated that the petitioners do not get any right for employment and, therefore, the petitioners are not entitled to any writ of mandamus.

6. I have considered the provisions of Apprentices Act. I have also considered the judgment of the Hon'ble Apex Court. In view of the judgment of the Hon'ble Apex Court, the petitioners have no legal right to get employment in the respondent board where the apprenticeship was started somewhere in 1983 and same was completed in 1986 whereas the petitioners have filed this petition somewhere in 1993. In view of this and even on the ground of delay this Court cannot give any relief to the petitioners in this behalf. In view of the same, the petition is rejected. Rule is discharged with no order as to costs.

(K.M. Mehta, J.)

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